



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,651	12/17/2001	Francis D. Palazzo	4665/6	1856
26291	7590	07/13/2005	EXAMINER	
MOSER, PATTERSON & SHERIDAN L.L.P. 595 SHREWSBURY AVE, STE 100 FIRST FLOOR SHREWSBURY, NJ 07702			TRAN, HAI V	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,651

Applicant(s)

PALAZZO ET AL.

Examiner

Hai Tran

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/04/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 03/04/2005 with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20 are rejected under 35 U.S.C. 101 as non-statutory subject matter because claims 1-20 is directed to a nonfunctional descriptive material, i.e., a data structure stored on computer-readable medium, and the data structure operative to provide a link... is not-statutory. Since no requisite functionality is present to satisfy the practical application requirement.

Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

Art Unit: 2611

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-5, 9-21 are rejected under 35 U.S.C. 102(e) as being unpatentable by Fries (US 6317885).

Claim 1, a data structure stored on a computer readable media, the data structure comprising:

One or more data tags, each data tag used to provide information regarding a broadcast advertisement (i.e., pay-per-view; Fig. 6; Col. 7, lines 34-55);

One or more epg action tags (i.e., ppv events), each epg action tag used to define a valid epg feature (i.e., buy ppv) that may be accessed from within the broadcast advertisement, the epg feature being related to the broadcast advertisement, a program (ppv program) associated with the broadcast advertisement or both (Col. 13, lines 58-65; Col. 18, lines 8-23);

the data structure operative to provide a link between broadcast advertisement and an epg to provide access to epg features defined by the epg action tags from within the broadcast advertisement (Col. 18, lines 8-23 and Col. 19, lines 15-40).

Claim 2, "wherein the data structure is formatted for broadcast in combination with the broadcast advertisement to one or more set top terminals" (Fig. 1; Col. 4, lines 17-30);

Claim 3, limitation “wherein each of the one or more electronic program guide action tags are marked by an opening and a closing tag, the opening and closing tag operative to define a data type for each of the one or more electronic programming action tags” is inherently met by the well known HTML tags using as a delimiter for each action tag or event, as described by Fries in; see Col. 8-15;

Claim 4, “wherein the opening and closing tag enclose the valid electronic program guide feature in order to delimit the valid electronic program guide feature from another valid electronic program guide feature.” is further met by Fries because it is an inherently well-known feature of the standard HTML Tag using as a delimiter for each epg feature (i.e., buy ppv), as described by Fries; see Col. 8-15;

Claim 5, Fries further discloses wherein the valid electronic program guide feature (i.e., buy ppv) comprises an electronic program guide action parameter (i.e., set time to record/remind when the ppv movie is available) of a data type (ppv movie) corresponding to the opening and closing tag (Col. 18, lines 7-65).

Claim 9, Fries further discloses wherein the epg action parameter comprises a ppv purchase information (Col.18, 18-22).

Claim 10, Fries further discloses wherein the epg action parameter comprises information to set a future reminder for a program (Col. 18, lines 15-18 and lines 45 of table, same col. 18);

Claims 11 and 12, Fries further discloses wherein the epg action parameter comprises a network address, wherein the network address is an Internet address (Col. 18, lines 24-30).

Claim 13-16, limitations "wherein the one or more data tags comprises ppv information, wherein the ppv information comprises program date information, wherein the ppv information comprises program time information, wherein the ppv information comprises program channel information" is inherently met by Fries because ppv information inherently has these claimed limitation in order for the user to recognize the title of the ppv movie, the date and time of the ppv movie is available for buying and of course the channel associate with the ppv movie for the user to tune to (col. 18, lines 10-20).

Claim 17, Fries further discloses wherein the one or more data tags comprise a unique advertisement identifier (see Fig. 6 with unique page elements thereon; Col. 6, lines 65-Col. 9, lines 35);

Claim 18, Fries further discloses wherein the identifier comprises a key to locate additional program information from a set of guide data (see Fig. 6 with unique page elements thereon, in which the user could select one of the element to obtain additional information regarding the selected element; Col. 6, lines 65-Col. 9, lines 35);

Claim 19, Fries further discloses wherein the one or more data tags comprise a unique product identifier (see Fig. 6, i.e. Market report);

Claim 20, Fries further discloses wherein the identifier comprises a key to locate additional program information from a set of guide data (see Fig. 6 with unique page elements thereon, in which the user could select one of the element to obtain additional information regarding the selected element; Col. 6, lines 65-Col. 9, lines 35);

Claim 21, the method claim is analyzed with respect to claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fries (US 6317885) in view of Lawler et al. (US 5805763).

Claim 6, 7, and 8, Fries indicates that a PPV program (broadcast advertisement) could be set to be recorded, but fail to indicate the location to record such as a local location or a remote location to record/store the PPV program(broadcast advertisement).

Lawler discloses in response to a user selection for recording, the system set a record tag which indicates the location for recording the program selected, i.e., locally or remote location (Col. 2, lines 15-30 and Col. 13, lines 14-32). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries with Lawler so to give to user options to store information at different location as desired.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 2611

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7305. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher C. Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HT:ht
07/07/2005


HAI TRAN
PRIMARY EXAMINER